

**Town of Milford
Zoning Board of Adjustment Minutes
January 15, 2015
Case #2014-21
St. Joseph Hospital
Variance**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Michael Thornton
Joan Dargie
Kathy Bauer, Board of Selectmen Representative

Absent: Laura Horning
Len Harten, Alternate

Secretary: Peg Ouellette

The applicant, St. Joseph Hospital of Nashua, the owner of Map 31, Lot 32-1, located at 442 and 444 Nashua St, in the Residence A District, is requesting a Variance from Article VII, Section 7.06.7:F to allow two directory (directional) signs to be internally located on site, each of which will not exceed 21 SF (per side) where 4 SF (per side) is allowed.

Minutes Approved on February 12, 2015

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board and introduced the Board. He read the notice of hearing into the record. The list of abutters was read and no abutters were present. J. Bradford Westgate, attorney with Winer and Bennett, LLP appeared on behalf of the applicant. Kyle Burchard of Meridian Land Services and Bob Demers from St. Joseph Hospital were also present.

Z. Tripp informed Attorney Westgate that, there being only four Board members present and three affirmative votes being needed for approval, he could sign a waiver and proceed with a four-member board or he could elect to table the case until the next regularly-scheduled meeting, which will be on February 5th.

Atty. Westgate opted to proceed with the case and signed a waiver.

Atty. Westgate stated that since St. Joseph had two applications before the Board this evening – one for a monument sign and one for a directional sign – he would recommend that testimony put forth in the first case be incorporated into the second case to streamline the process. The Chair had no problem with that.

Atty. Westgate presented a lot line adjustment plan that was a component of approval process for the new medical center building. In November 2014 the ZBA granted a variance necessary for the project to proceed. The plan was to demolish the existing structure as well as parking, landscaping, retaining walls, etc. Across the street is Limited Commercial Business District. They knew they would need a variance for signage. Until it was demolished it wasn't nailed down what they might be. They met with Planning Board and Jodi Levandowski. Bill Parker determined two variances were needed. One for two directional signs and one for monument sign. Variances are not needed for permitting signs, only for square footage.

Z. Tripp said the plan was approved by Community Development Office. Do the applicants have to review with Planning Board re the look, function, etc.?

Atty. Westgate said that wasn't a condition of approval. He didn't think it was a component of site plan regulations.

Z. Tripp asked if this was the final look.

Atty. Westgate said they have to get sign permits. The directory signs permit in Exhibit A being reduced to 4 SF on either side. Variance is for 21 SF. They are less than that.

Z. Tripp said signs are actually 5 x 4.

Atty. Westgate said that was correct. Looking at the board, the two directional signs are the blue ones in the upper right and that is what they will look like. They are internal to the site. You would have to go 100 ft. or more off Nashua Street before you come to the first sign and further to the second sign. They are to direct patients where to go for a particular department – urgent care, one way and services the other way. The signs will be 5ft x 4ft support pole that is 8ft. 9 inches tall and will not be lit. There is sufficient light from the building and there is reflective lettering so headlights will assist people driving up.

Z. Tripp asked if any questions from the Board.

J. Dargie asked re Kaley Park sign being moved, was that shown on the board and whether it was going to be moved to that location.

K. Burchard pointed it out just to the right of the entrance and said it already was moved.

Atty. Westgate said the old monument sign indicating the medical center has been moved to the new location where they hope the new monument sign will be.

Z. Tripp asked for further questions from the Board. There were none, so he opened the meeting for public comment.

Terrence Wilkins of 85 Old Brookline Road came forward. He said he'd always found it difficult to find his way around and find a specific office. It made sense to make it easier.

There were no other public comments.

Z. Tripp closed the public comment portion of the meeting. He asked the representative to read the application into the record.

Atty. Westgate stated he would like to paraphrase language for the five criteria to shorten it.

Z. Tripp agreed.

F. Seagroves said it would be in the record.

1. Granting the variance would not be contrary to the public interest because:

The variance would not be contrary to the public interest. It is not contrary to allow two signs which will be well set back to inform patients, staff and public as to the location of the departments. This is important given the construction of the new medical center building and reconfiguration of parking and access to the medical center and Kaley Park. They have not a lot of usage of Kaley Park because it starts after the spring and into the summer. It seemed more functional from a traffic point of view.

2. The use is not contrary to the spirit of the ordinance because:

The spirit of the ordinance comes from the purposes of the ordinance which are public health and safety. The sign ordinance has specific purposes, including effective use of signs,

allowing economic growth and vehicle safety. These signs promote that. Specific purpose of the ordinance allows them to state these signs are consistent with the spirit given the traffic and vehicle safety. The idea of going 4 SF on a directory sign may have come about by not wanting the main road to be cluttered. Setting it back makes it not obtrusive than having it more than 4 SF and right up to the road. Having two signs precludes having four signs which are harder to see. There is an older demographic that goes there. Also, they are keeping the sign similar to the one on the main campus in Nashua.

3. Granting the variance would do substantial justice because:

Allowing two signs internal to the site does substantial justice in not harming public when they are not imposing signs right along the main road.

4. The proposed use would not diminish surrounding property values:

The ZBA found in 2013 that the project would not diminish value of property. The signage is a corollary to the project and would do what was decided in 2013 –put two signs allowing patients and public to function within the site.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

- i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**
- ii) and; The proposed use is a reasonable one because:**

Re hardship, that is looking at special condition of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the special application of that provision of the property and the use is a reasonable one. There are several special conditions. It is a pre-existing nonconforming use that has been part of the community for 35 years, but it has to modernize. The land has been reconfigured which led to the site reconfiguration and layout of the drive to be redone. That led to the Kaley Park road reconfiguration. In 2013 the ZBA recognized the need to expand and modernize. They want to accommodate access to Kaley Park. There are mixed uses and mixed zones in the area. Driving up, you don’t know it is residential on one side and commercial on the other. There is signage along on both sides that indicate non-residential uses. They state that the purpose is to promote traffic safety, pedestrian safety to indicate where people should go on the site and promote economic development. Those purposes are frustrated with a smaller sign set back. The use is a reasonable one - two signs set back vs. multiple signs would be a reasonable approach.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

Z. Tripp asked if there were further questions from the board. There were none, so he proceeded to discussion of the criteria.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves didn’t see denial would benefit the public. He didn’t see any harm in the sign.

M. Thornton – yes. It would not be contrary to the public interest.

J. Dargie agreed. It is not lit and not going to cause any problem.

Z. Tripp agreed with the board. Two directional signs would not be contrary to public interest because they would not alter the essential character of the neighborhood or violate the ordinance because they provide communication.

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes. It could be the spirit is one of keeping signage in good taste and small enough not to obstruct. In this case there is enough information on the sign and people looking for the medical center could be stopped trying to see a smaller sign fading into the background and too difficult to see.

J. Dargie – yes, it can be granted without violating the spirit.

F. Seagroves – yes, the handbook says they are discussing health, safety and general welfare.

Z. Tripp agreed with the board. He read from Sec.7.06.1.A encouraging effective use and means of communication, retain and attract economic growth, improve pedestrian and promote traffic safety, minimize effect on any nearby public or private property. The proposal satisfies the intent of the ordinance and is in the spirit.

3. Would granting the variance do substantial justice?

F. Seagroves – yes. The public would not gain by denying. They are looking at individual gain versus public. He didn't see any public gain with a smaller sign.

J. Dargie agreed it will do substantial justice. Having a large directional sign helps.

M. Thornton said a 4 SF sign would fade into the background. He would like to avoid sequential signs 4 SF or less so there would have to be more signs. This does it very well.

Z. Tripp agreed with the board. Granting would do substantial justice. No gain to the public by denying. All the information on a 4 SF sign. Multiple signs would be confusing and would be a loss to the public.

4. Could the variance be granted without diminishing the value of abutting property?

M. Thornton – yes. It would avoid appearance of clutter if more signs were necessary.

J. Dargie – agreed, it would not diminish value.

F. Seagroves – yes, you won't see them until well down into the property.

Z. Tripp agreed with the board. Signs are internal. They look like they will fit in there and won't be lit so it should not be a nuisance.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves – re B, there is a hardship. Without signs, people going into the center would not know where to go. If they are looking for the building it would be a hardship. The general purpose of the ordinance is to keep signs somewhat small but this is not much bigger.

Z. Tripp commented that it is 4 SF to 21 SF.

M. Thornton said it was not the dimensional square feet but the amount of information on the sign.

F. Seagroves agreed.

M. Thornton said the answer to both is yes. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property, and the proposed use is a reasonable one. It is more reasonable than a multitude of small signs.

J. Dargie – yes. No fair and substantial relationship exists between the public purposes of the ordinance and the specific application of that provision to the property, it works fine. Proposed use is a reasonable one.

Z. Tripp said what is unique is that it is a fairly large facility sharing access to parking and having to direct traffic to the parking and multiple buildings. It is unique to have signage in residential use because it is unique to have a medical center in Residence A. Re fair and substantial relationship, it still complies with the purpose and intent per earlier testimony. It promotes economic development, safety and commercial activity. Re reasonable use, limited directional signs would limit ability to reasonable access due to the size of the property. So he would say yes.

Vote:

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp – yes

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Trip – yes

3. Would granting the variance do substantial justice?

J. Dargie – yes F. Seagroves – yes M. Thornton – yes Z. Tripp – yes

4. Could the variance be granted without diminishing the value of abutting property?

F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp – yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

J. Dargie – yes F. Seagroves – yes M. Thornton – yes Z. Tripp – yes

Z. Tripp asked if there was a motion to approve case #2014-21

J. Dargie made the motion to approve Case #2014-21

M. Thornton seconded the motion.

Final Vote

F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp – yes

Case #2014-21 was approved by 4 – 0 vote.

Z. Tripp informed the applicant of the approval and reminded the applicant of the thirty (30) day appeal period.